

TOWN OF MERRIMAC BOARD OF APPEALS

Minutes of the September 27, 2003 Meeting

Present: Mary Carol Solum, Chair; Kathy Koepp; Rick Richards; and Pat Sereg. Also present was Tim McCumber, Zoning Administrator & Secretary.

Solum called the meeting to order shortly after 9:00am. McCumber certified the meeting had been properly noticed and all legally required notices had been timely provided for the matters to be considered by the Board. Solum stated the procedures for the day. McCumber read the Public Hearing Notice.

The Board discussed site visitation and deemed it unnecessary.

Hearing BA-02-03 was called to order. McCumber opened the hearing by testifying that the property in question is a 23-acre parcel currently housing 32 mobile homes and cabins on the site, as well as approximately 45 accessory structures, such as sheds or garages, noting that some structures were indistinguishable and difficult to view from the road. He added that the owners of trailers recognize various boundary lines established by the property owner on the parcel, however, the property has not been legally platted as a subdivision. McCumber reviewed with the Board that the granting of a single zoning variance required that a 3-part test must be met. The test requires that the applicant must prove unnecessary hardship; noting that the Wisconsin Supreme Court clarified in a decision that unnecessary hardship is present when there is no other reasonable use of the land. McCumber noted that the parcel clearly is being utilized by the owners and its renters. He also noted that self-imposed hardships and financial hardship are not deciding factors when determining the hardship test. The second part of the test is to prove that there is not any unnecessary hardship due to unique property limitations and noted that the circumstances of the applicant are not a deciding factor. The final part of the test is that there is no harm to public interest, noting that based on the attendance appearing in favor that this test might possibly be met, but the first two would need to be proven by the applicant. Failure to meet all three standards should result in the denial of a variance. He noted that granting approval without all three standards being met would require the board to allow for each of the variances to be granted on all properties in the R-1 district or any future actions to deny these requests could result in discriminatory practices by this board. McCumber noted that when the Town adopted zoning in 1994, it was his opinion that this parcel had not been singled out as the Summer Oaks Cove Development had also been zoned residential. He stated the owners/developers requested a Planned Area Development, which eventually was approved by the Zoning Commission and Town Board, which brought that particular property into compliance with the ordinance. McCumber noted that the owners of this parcel could have affected the zoning by participating in the planning process, which was available to them prior to enactment of the ordinance, or to apply for a Planned Area Development. McCumber felt

that both procedures would have served the property better than attempting to go through the Appeals process. McCumber introduced County Lakeshore Zoning Ordinance 8.09 (f) and offered that it could also be utilized as a guideline, as the town often refers to county ordinance when looking for clarification if there is any question as to how to proceed. He noted our ordinance is clear enough, however, the county ordinance specifically includes the terminology “when voluntarily removed” as well as when damaged by fire. It was noted that Mr. Laubmeier removed the structure after it was destroyed by fire.

Mr. Ronald Laubmeier testified that mice had eaten through the wiring of his mobile home causing a fire. It was a cold day, which caused the fire department difficulties, and they had to call for additional support. It is his opinion that had the fire department had the proper equipment, his loss would have been minimal and the damage might have been limited to the point as to where he could have made the proper repairs within the guidelines of the ordinance. Laubmeier stated that it was his belief that the zoning standard being applied was only for those properties within 100 feet of the lake. He noted that he lost his down payment on the new trailer because of the delays he has occurred in this process. He feels that the new home would be the same, if not nicer, than the home had had prior to the fire. He believes the community overall is a nice community and he enjoys spending his summers on the lake.

Those appearing in favor included Joyce Frye of Sauk City who appeared on behalf of the property owners, Walch’s Bay LLC. She stated that the family created the property 50 years ago. 15 residents live there year round and the remaining 17 are there for most of the summer. Frye stated that with the consideration of Smart Growth, the loss of this housing development would prevent there from being any affordable housing in the Town of Merrimac. Steve Heath who owns a home on the property gave the opinion that if Mr. Laubmeier lost his home that it would create an unnecessary hardship. Lyle Fossage appeared and stated that he bought his place as a retirement home in 1987. He feels that his efforts to work with the township have been difficult. He noted that he didn’t even need a permit back then to add a porch onto the trailer when he added on. Ted Obler of Madison, WI and an owner of a trailer on the property noted that he believes everyone appearing in the audience is in favor of allowing this and feels that Laubmeier was trying to accommodate the neighbors when he tore down the home after the fire. He felt the damage was minimal enough as to allow for repair to the trailer. He also noted Mr. Laubmeier’s expenses have been high as a result of this process. Joyce Fry added that none of the adjoining property owners are here opposing Mr. Laubmeier’s request. She also added that the property has always been there and that they have a low demand of services from the Town and contribute to the tax base. Craig Meyer who is an owner of a trailer and lives in the Wisconsin Dells said that he was there the day after the fire and the home was an eyesore and he believes that Laubmeier was acting appropriately in removing the home. McCumber read letters from Gracie Roemer & Richard McKee and Burton & Betty Mills speaking in favor of granting the variances. Valerie Masura, of Lake Zurich, IL, noted she owns the trailer next door and lives there on a part-time basis. She said that Laubmeier is a good neighbor, has kept his property up nicely, and that he has done nothing wrong.

No persons appeared in opposition or as interest may appear. The motion to close the public hearing was made by Sereg, second by Koepp. Motion passed.

Sereg opened discussion by stating that the number of variances was too high to consider this for approval. She stated the town plan was approved and the matter of rights to all parties, those who live on the Walch property and the residents of the town in general, need to be considered. She stated that this board would be legislating if it were to approve this request and thought there was a better way for the owner to proceed. Solum noted that all of the variances requested were standards established by the town, but are standards also established by the county and the state. She noted the owners have reasonable use of the property. She also noted the state standard for a new lot with a sanitary system is 20,000 sq. ft. and the property would support only 14 dwellings. She noted that legal non-conforming structures are allowed but that the loss of these structures means that the non-conforming structures should go away when their use ceases. Sereg noted that her property is in the same situation as it relates to the covenants of her neighborhood. McCumber stated that the County ordinances would also apply and if this board were to approve this, Laubmeier must also go through Sauk County Board of Adjustment. Solum added that it is unusual to see this high number of variances. She sat on the county's Board of Adjustment and the most she has ever seen prior to today was 2 variances and those were for measurements and a conditional use. She noted that number 5 on the public hearing notice included 4 variances. McCumber noted that number 5 was lumped together as all 4 variances related to dimensional standards of the structure and noted that there were 8 variances being requested in total. Sereg said the structure was grandfathered in and now it must cease as deemed by our ordinance. Koepp noted that the fire destroyed the building and that Mr. Laubmeier's later removal of the structure would not affect this board's pending decision. Richards stated that whether or not the fire destroyed it by more than 50%, or whether it was removed, the property must conform to the code and it does not. Koepp noted that she was there working as an EMT on the day of the fire and that the home appeared to be beyond repair. She stated she is trying hard to find a way to approve this but cannot find any reason to. Koepp added that when the condos on Bluff Rd. were destroyed by fire, the owners were not allowed to tear down and rebuild. The structure was only allowed to be rebuilt up to 50% of its value. She also stated that services in the town are provided the same for all. Richards said he could not come up with any reason to approve the request.

Sereg made the motion to deny the application as submitted, Richards second. In discussion of the motion, Solum noted that the reasons for denial specifically state that the hardship test had not been met as allowed by the letter of the law. The motion was unanimously approved.

Motion by Koepp to adjourn. Second by Richards. Motion approved.

(See individual decision letters for details of actions taken by the Board held in deliberation on appeals by the Board.)